IN THE

Supreme Court of the United States

October Term, 1979

No. 79-651

ROBERT AMES and MARY AMES,
his wife,

Petitioners,

-vs-

W. DUANE McCARTY, M.D.,
LOVELACE CLINIC and LOVELACE-
BATAAN MEDICAL CENTER,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF NEW MEXICO

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

The Petitioners, Robert and Mary Ames, pray that a writ of certiorari issue to review the final order of the Supreme Court of the State of New Mexico entered on July 25, 1979. Request for reconsideration was denied on August 17, 1979.

OPINION BELOW

The Court of Appeals of the State of New Mexico, in an unreported opinion filed June 7, 1979, affirmed a district court verdict for defendants-respondents. The Court of

Appeals subsequently denied plaintiffs-petitioners' Motion for Rehearing in an Order dated June 19, 1979. The opinion appears at Appendix A, infra, page 13, and the Order denying the Motion for Rehearing is found at Appendix B, infra, page 18. Petitioners then requested a Petition for Certiorari from the Supreme Court of New Mexico which was denied on July 25, 1979. Petitioners' Request for Reconsideration was denied by the New Mexico Supreme Court on August 17, 1979. The Order denying the Petition for Writ of Certiorari appears at Appendix C, infra, page 20, and the Order denying the Request for reconsideration appears at Appendix D, infra, page 21.

JURISDICTION

This Petition for Certiorari to the Supreme Court of the United States was filed less than 90 days after the denial by the New Mexico Supreme Court of Petitioners' Petition for Certiorari. The jurisdiction of this court is invoked under 28 U.S.C. §1257 (3).

QUESTIONS PRESENTED

1. Whether the hysterectomy performed by Respondent W. Duane McCarty, M.D., without Petitioner Mary Ames' consent invaded her right to privacy as guaranteed by the Federal Constitution.

2. Whether the decision deprived Petitioner of the equal protection of the laws of the State of New Mexico in violation of the XIVth Amendment to the United States Constitution by allowing her written consent to be altered by oral testimony in this one case when such alteration is not permitted by state law.

3. Whether the bias of the trial judge against Petitioners' attorney deprived Petitioners of their rights to due process and equal protection of the law.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV:
"No state shall . . . deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Constitution of New Mexico, Article VI, §18:

"No justice, judge or magistrate of any court shall, except by consent of all parties, sit in any cause . . . in which he has an interest."

STATEMENT

Petitioner Mary Ames went to Respondent Medical Clinic for a routine check-up. She had three children and both she and her husband wanted another child. The Respondent doctor, a gynecologist, found a mass in the cul-de-sac in an area adjacent to the ovaries. The Respondent doctor recommended exploratory surgery, specifically a culdotomy. Five days later Petitioner came back to the clinic for the surgery. She signed an authorization for surgery, copy of which appears as Appendix E, infra, at page 22. The exploratory surgery showed that the mass was only normal tissue. In spite of this finding, Respondent doctor performed a vaginal hysterectomy. The uterus was normal, as a pathologist's examination confirmed. Petitioner Mary Ames knew that a hysterectomy was possible but she con-

sented to it only if the exploratory surgery showed the mass to be abnormal.

A medical-legal expert testified for Petitioners that the medical records, including the consent, showed that the hysterectomy was not authorized under the circumstances. His testimony was not contradicted. The only justification for the hysterectomy came from Respondent doctor at trial and even he never testified that Petitioner consented to the surgery. Therefore there was no consent to the hysterectomy.

The trial court found that Petitioners consented to the hysterectomy. That finding was affirmed by the New Mexico Court of Appeals.

After the case had been appealed, the district court Judge sent a letter to Petitioners' attorney, copy of which appears as Appendix F, infra, at page 24. The judge recused himself from all matters handled by Petitioners' attorney because he found it "increasingly difficult to be objective" in such matters. The present case is the second to the last matter in which Petitioners' attorney appeared before that district judge.

REASONS FOR GRANTING THE WRIT

The Fourteenth Amendment prohibits states from depriving any person of his liberty without due process of law or to deny any person equal protection of the law. This federal guarantee of due process extends to state action through its judicial as well as through its legislative or executive branch of government. *Brinkerhoff-Farris Co. v. Hill*, 281 U.S. 673, 680 (1929).

I

The hysterectomy performed on Petitioner without her consent invaded her right to privacy guaranteed by the federal Constitution. This "Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution." *Roe v. Wade*, 410 U.S. 113, 152 (1973). The personal right involved in this case relates to the right to procreate. The guarantee of personal privacy applies to fundamental rights, including the right of procreation. *Roe v. Wade*, supra at 152; *Skinner v. Oklahoma*, 316 U.S. 535, 541-542 (1942). As Justice Stewart stated in his concurring opinion in *Roe v. Wade*, supra, at 169.

> freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.

Thus the constitution does protect a woman's right to privacy in decisions relating to procreation.

Petitioner Mary Ames was sterilized, without her consent, by the hysterectomy performed by Respondent doctor. *Skinner v. Oklahoma* dealt with the power of a state to sterilize individuals. As this Court recognized in Skinner, supra, at 541,

> There is no redemption for the individual whom the law touches. Any experiment which the State conducts is to his irreparable injury. He is forever deprived of a basic liberty.

Petitioner was "forever deprived of a basic liberty." The unauthorized hysterectomy performed by Respondent doc-

tor deprived Petitioner of the opportunity to bear children. Based on the uncorroborated, after the fact testimony of Respondent doctor, the trial court found that Petitioner had consented to the sterilization. As a practical matter, the basic liberty to procreate would be of little significance if it could be taken away from individuals, without their consent, by physicians.

This Court has repeatedly recognized a woman's right to terminate a pregnancy. *Roe v. Wade*, supra; *Doe v. Bolton*, 410 U.S. 179 (1973); *Bellotti v. Baird*, No. 78-329 decided July 2, 1979 (47 L.W. 4969). The right to interrupt the normal reproductive cycle deserves no greater constitutional protection than the right to allow the normal reproductive cycle to take its course. Petitioners had decided to eventually have another child. If the decision to terminate or prevent pregnancy is constitutionally protected, certainly Petitioners' decision to have a child is entitled to the same protection. The state courts of New Mexico failed to enforce Petitioners' constitutional rights. Petitioner brought a medical malpractice action against Respondents for an unauthorized hysterectomy. Obviously the trial judge could not order Respondent to undo the sterilization. What the judge could, and should, have done was to award damages to Petitioner for the deprivation of her Constitutional rights. The failure of the judge to award damages amounts to state interference in Petitioners' decision to bear children. A judge cannot interfere with a woman's decision not to bear children. *Bellotti v. Baird*, supra at 4976. The judge in this case should not be allowed to interfere with Petitioner's decision to bear children by refusing to award damages to her for the unauthorized sterilization performed by Respondents.

II

The Supreme Court of New Mexico, in deciding a medical malpractice case in favor of the physician, ruled that the written consent to surgery could not be altered by the oral testimony of the patient. *Demers v. Gerety*, 589 P.2d 180 (1978). The basis of the decision in the case at bar was to allow respondent doctor to alter the written consent by his uncorroborated oral testimony. Petitioner was thus deprived of the equal protection of the law since her written consent was modified by the doctor's testimony years after the surgery occurred even though state law would preclude reliance on such testimony. A woman's decision of whether or not to bear children is constitutionally protected. That protection is worthless in this case if a doctor in a malpractice action can gloss over the woman's lack of consent to sterilization by uncorroborated testimony given years after the surgery.

The consent form signed in this case, Appendix E infra, shows that petitioner was consenting to a possible vaginal hysterectomy. Petitioner testified, and the medical records indicate, that she consented to a hysterectomy if the exploratory surgery disclosed that the mass found on external examination was abnormal. The mass in fact turned out to be normal tissue. Therefore, the required contingency did not occur and, under the circumstances, there was no consent to the sterilization. *Demers v. Gerety, supra*, held that after-the-fact testimony about a patient's consent is subjective and is not substantial evidence as a matter of law. Equal protection of the law would require the state courts to apply the same standard to physicians as they apply to patients. If the patient is *Demers v. Gerety, supra*, was not allowed to alter his written consent by oral testi-

mony, equal protection would require that respondent physician not be allowed to alter petitioner's written consent by his oral testimony.

The state courts have refused to apply the correct standard in deciding whether petitioner consented to the sterilization. In so doing, they have deprived petitioners of the equal protection of the laws of the State of New Mexico.

III

On August 1, 1979, Judge Gerald Fowlie, the district court judge who presided at the trial of the case at bar, wrote a letter to Petitioners' attorney stating that he found "it increasingly difficult to be objective in matters in which you appear in person...". The case at bar was the second to the last case in which Mr. Klecan appeared before Judge Fowlie.

Due process requires a fair and impartial tribunal. *In re Murchison*, 349 U.S. 133, 136 (1954); *Johnson vs. Mississippi*, 403 U.S. 212 (1971); *Holt vs. Virginia*, 381 U.S. 131, 136 (1965); *State vs. Armijo*, 38 N.M. 73, 81, 29 P2d 511 (1933). A biased decision maker is "constitutionally unacceptable". *Withrow vs. Larkin*, 421 U.S. 35, 47 (1974). In *State vs. Armijo*, supra, at 81, the New Mexico Supreme Court quoted from *Moses vs. Julian*, 45 N.H. 52, 84 AM Dec. 114, as follows:

> 'it is essential to the rights of every individual, his life, liberty, property and character, that there should be an impartial interpretation of the laws and administration of justice.' And 'it is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit.' This is but the expression of a well known rule

> of universal justice everywhere recognized . . . It is one of the great principles of the common law, for which the people of England had struggled for ages, and which they ultimately succeeded in establishing against the strenuous efforts of a tyrannical government . . .
>
> Would any one suppose for a moment that a deprivation of life, liberty, or property by a court presided over by a judge who is partial to one party and hostile to the other is with due process of law?'

Due process is violated by the bias or prejudice of a judge where the judge has a "bent mind that may prevent or impede impartiality of judgment". *Berger vs. United States*, 255 U.S. 22, 33-34 (1921). The district court judge has admitted that he has difficulty being objective in cases where petitioners' attorney is involved. Thus, the bias of the judge stems from an extrajudicial source, as required by *United States vs. Grinnel Corp.*, 384 U.S. 563, 5D 3 (1966).

The district judge has testified that his increasing difficulty in being objective did not affect him in this case. However, the judge "whose acts are affected by prejudice is usually unconscious of its influence". *State vs. Scarborough*, 75 N.M. 702, 711-12, 410 P2d 732 (1966) "[R]eason cannot control the subconscious influence of feelings of which it is unaware." *Public Utilities Commission vs. Pollak*, 343 U.S. 451, 466 (1952). A judge "may imperceptibly to himself, however honest and pure his intentions, be unable to give a fair and impartial trial." *State vs. Scarborough*, supra, at 711.

> 'So illusive and so complex are the workings of the human mind, and so insidiously do impressions slip upon and sink into it, that even the most upright and conscientious judge may have feelings toward a party

> the character of which he does not recognize himself . . . Judges seldom recognize such feelings. More seldom do they admit their existence. An admission of the kind would be considered a weakness, a reproach to judicial temperment, that few have the courage to confront.'

State vs. Armijo, supra, at 77-78.

Furthermore, Judge Fowlie testified that he relates his difficulty in being objective to the case of *Hurley vs. Hurley*, in which petitioners' attorney participated. The district judge has testified that his "difficulty in being objective" related specifically to petitioners' attorney including infidelity as a grounds for divorce in *Hurley*. A Counterclaim in the *Hurley* case was filed in January, 1978 in which infidelity was listed as grounds for the divorce. That pleading is apparently what led to the trial judge's difficulty in being objective. His lack of objectivity, therefore, existed at least as early as January, 1978, a month before the trial in *Ames vs. McCarty, et al.*, and three months before the trial judge entered Findings of Fact and Judgment in that case. To summarize, the district judge relates his difficulty in being objective to a pleading filed by petitioners' attorney in the *Hurley* case. That pleading was filed in January of 1978, before the trial in the case at bar took place. Therefore, by his own testimony, the trial judge had difficulty in being objective before the *Ames* trial took place. By his testimony, it is true that consciously he does not believe he had difficulty in being objective in the case at bar. However, judges are seldom conscious of the fact that their acts are affected by prejudice. *State vs. Scarborough*, supra. Even more seldom can they admit feelings of partiality. *State vs. Armijo*, supra.

The district judge has now taken the necessary step of

recusing himself in all matters in which petitioners' attorney is involved. A judge should recuse himself, sua sponte, "where there exists in his own mind some real doubt as to the impartiality which he, as an individual, may exert on the matter then before him as a judicial officer". *United States vs. Valenti*, 120 F. Supp. 80, 92 (D.N.J. 1954) "[L]itigants are entitled to a fair hearing in a tribunal which is in fact disinterested, impartial and unbiased." *Nelson vs. Fitzgerald*, 403 P2d 677 at 679 (Alaska 1965). This principle is articulated in *Knapp vs. Kinsey*, 232 F2d 458, 465 (6th Cir.), cert. denied at 352 U.S. 892 (1956):

> "One of the fundamental rights of a litigant under our judicial system is that he is entitled to a fair trial in a fair tribunal, and that fairness requires an absence of actual bias or prejudice in the trial of the case. In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L.Ed. 942; Talbert vs. Muskegon Construction Co., 305 Mich. 345, 348, 9 N.W.2d 572. If this basic principle is violated, the judgment must be reversed. In re Murchison, supra; Berger vs. United States, 255 U.S. 22, 41 S. Ct. 230, 65 L.Ed. 481."***

That basic principle of fairness was violated in this case; the judgment must be reversed. It would certainly be a denial of the plaintiff's rights to due process to let this judgment stand. The "human limitations of the presiding judge may result in the reprivation of a just hearing". *State vs. Armijo*, supra, at 80. Due process requires a new trial before an objective, impartial judge.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that a writ of certiorari should be granted to review the order of the Supreme Court of New Mexico.

Respectfully submitted,

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Suite 1221, 505 Marquette, NW
Albuquerque, New Mexico 87102
Attorney for Petitioner

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

ROBERT AMES and MARY AMES,
his wife,
Plaintiffs-Appellants,

v. No. 3632

W. DUANE McCARTY, M.D.,
LOVELACE CLINIC and LOVELACE-BATAAN MEDICAL CENTER,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

FOWLIE, Judge

EUGENE E. KLECAN
KLECAN & ROACH, P.A.
Albuquerque, New Mexico *Attorneys for Appellants*

W. ROBERT LASATER, JR.
KENNETH J. FERGUSON
RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.
Albuquerque, New Mexico *Attorneys for Appellees*

MEMORANDUM OPINION

Plaintiff's theory of liability in this medical malpractice case was that Mary Ames did not give her informed consent to the hysterectomy performed by Dr. McCarty. The trial court made findings adverse to plaintiffs; they appeal.

Plaintiffs make a generalized attack on the trial court's findings. This attack, in essence, recognizes that Mary

Ames signed a written consent for a culdotomy, oophorectomy and possible vaginal hysterectomy. Plaintiffs contend that Mary's consent to a possible hysterectomy was to be determined by contract law and that the trial court erred in considering Dr. McCarty's testimony concerning his oral communications to Mary prior to the surgery. Gerety v. Demers, N.M. , 589 P.2d 180 (1978) held (at 589 P.2d 189) that contract law is patently inapplicable. Further, the testimony as to Dr. McCarty's oral disclosures was properly admitted on the informed consent issue. "The physician is required to disclose the factors that might reasonably influence the patient in his decision, such as the inherent potential hazards of the proposed treatment, any alternatives to that treatment, and the results likely if the patient remained untreated." *Gerety*, supra, at 589 P.2d 192.

Plaintiffs also make specific attacks on Findings Nos. 2, 3, 4, 5, 6 and 7. These findings are supported by substantial evidence and support trial court Conclusion No. 2, which is that plaintiff gave her full and informed consent to the surgery. The trial court's findings being supported by substantial evidence, it was not error to refuse plaintiffs' requested findings to the contrary. Fierro v. Murphy, 85 N.M. 179, 510 P.2d 112 (Ct.App. 1973).

The judgment for defendants is affirmed.

This opinion is not to be officially reported and published, and is not to be cited as precedent. Section 34-5-13, N.M.S.A. 1978.

IT IS SO ORDERED.

JOE W. WOOD,
Chief Judge

I CONCUR:

B. C. HERNANDEZ, J.
LEWIS R. SUTIN, J. (Dissenting)

SUTIN, Judge (Dissenting)

I dissent.

Gentlemen:

A. A. Milne wrote the following poem:

> There was once an old sailor my grandfather knew
> Who had so many things which he wanted to do,
> That each time that he thought it was time to begin
> He couldn't because of the state he was in.

Sutin: I don't have time to study this case
Because I'm a sailor who sits in this place.
Have faith my friends in the upper court
Where study is a judicial sport.

This Memorandum Opinion deserves poetry to elevate the dignity, learning and culture of this Court. As I wrote in an early opinion:

> The time has come to recognize that justice does not mean "hang in haste and try at leisure." It means to do justice; to see justice done.

This is the sine qua non of 50% to 60% of the opinions of this Court. This Court constantly plays "ring around the rosy" with its opinions. "Therefore is the name of it called Babel; because the Lord did there compound the language of all the earth." Genesis, 11:9. Judge Fowlie, I am not dissenting from your decision. I am dissenting from this Memorandum Opinion.

Brother Klecan, never fear! The Supreme Court will study this case carefully. It does not need my help. However, seldom does this Court or the Supreme Court reverse a case tried before a district judge who makes findings of fact. But upon appeal always remember this: If there is substantial evidence to support the findings, you are done for. You must concentrate *only* on those findings for which there is *absolutely* no evidence, no facts nor inferences therefrom. You must set forth *all* facts most favorable to

the *opposition* to prove your point. No lawyers have the foresight to do this. Brother Klecan, this lecture is not for you. It is for Jim and John and Mark. Even if King Solomon tried to lecture to you or me, we would not listen. We are too rigid in our mental attitudes and profound wisdom. Now, you know this is a Correspondence Opinion. If you want to send me a diatribe in response please do so. I wish you had asked me not to sit in this case. When you receive this Memorandum Opinion it will upset you. Such an opinion means: "Why in hades did you spend so much money and labor for a lost cause? It was silly. Appeals of this nature should be avoided."

Judge Fowlie is a fine district judge. I am sure his decision is based upon good conscience and fair judgment. But why did you forgo a jury? You always ask for one when you defend. Now, when you petition the Supreme Court for certiorari, use my concurring opinion in Demers v. Gerety, 85 N.M. 641, 515 P.2d 645 (Ct.App. 1973). Certiorari was granted and we were reversed, but our opinion was published. This occurred in the good ole days. Do not mention Judge Sutin, concurring. Have Mark or John dissect the many authorities cited on "educated consent." It is my confirmed belief that an "educated consent" is rarely obtained.

One of the reasons I am delighted that the Supreme Court denies certiorari is that my dissenting opinions are published. See Cooper v. Curry, 589 P.2d 20 (N.M.Ct.App. 1978). Certiorari was granted and then quashed. This case involved the liability of a hospital for failure to obtain an "educated consent."

Your brief was too verbose, much like my formal opinions. It ran beyond the limit allowed in this Court. Now, please do not scream at me. You should have Jim, Mark or John write your brief. They usually do an excellent job. I do recognize that you spent many days of hard labor to get your Brief-In-Chief and Reply Brief filed. But never rely so much on Am.Jur.2d. You should have cited a host

of cases with short quotes directly in point. It is difficult to absorb some 38 pages of a brief.

Brothers Lasater and Ferguson did an excellent job in their Answer Brief. Especially so when, in citing the Demers case, it said "Sutin, J. concurring." In 15 pages, they hewed the mark with simplicity and logic.

With the highest respect and esteem, I am
Yours,

LEWIS R. SUTIN
Judge

IN THE COURT OF APPEALS OF THE
STATE OF NEW MEXICO

ROBERT AMES and MARY AMES,
his wife,

Plaintiffs-Appellants,

vs. No. 3632

W. DUANE McCARTY, M.D.,
LOVELACE CLINIC and LOVELACE-
BATAAN MEDICAL CENTER,

Defendants-Appellees.

MOTION FOR REHEARING

COME NOW the appellants in the above-entitled cause and move the Honorable Court for a rehearing. In support of the above and referring to the one and one-half page Opinion, we find that the Opinion states that the lower Court's Findings 2, 3, 4, 5, 6 and 7 are all supported by substantial evidence. Appellants move the Court to reconsider all the evidence on Findings of Fact No. 3 and to reverse its statement after doing so.

The primary reason for surgery on appellant, Mary Ames, cannot be the purpose as stated by the Finding. (No. 3) Transcript references indicating the above are to be found in Appellant's Brief at pages 21-26.

Other Findings of Fact by the Court are also without foundation in the evidence; however, a reversal of the Court's ruling on Finding No. 3 would also require a reversal of the other Findings since they build on Finding No. 3.

WHEREFORE, appellants request an order of this Court granting a rehearing in this case.

KLECAN & ROACH, P.A.
EUGENE E. KLECAN
Attorneys for Appellants
Suite 1221 - Western Bank Bldg.
505 Marquette Avenue, N.W.
Albuquerque, New Mexico 87102
Telephone: (505) 243-7731

I HEREBY CERTIFY that a true
and correct copy of the foregoing
Motion for Rehearing was mailed
to opposing counsel of record this
15th day of June, 1979.

E. E. KLECAN

THE MOTION FOR REHEARING IS DENIED THIS 19TH DAY OF JUNE, 1979.

JOE W. WOOD
Chief Judge

APPENDIX C

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

Wednesday, July 25, 1979

NO. 12,613
ROBERT AMES and MARY
AMES, his wife,
Petitioners,

vs. Original Proceeding on Certiorari

W. DUANE McCARTY, M.D., LOVELACE
CLINIC and LOVELACE-BATAAN
MEDICAL CENTER,
Respondents.

This matter coming on for consideration by the Court upon petition for writ of certiorari, and the Court having considered said petition and being sufficiently advised in the premises;

NOW, THEREFORE, IT IS ORDERED that petition for writ of certiorari be and the same is hereby denied.

IT IS FURTHER ORDERED that the Record in Cause No. 3632 be and the same is hereby returned to the Clerk of the Court of Appeals.

ATTEST: A True Copy

ROSE MARIE ALDERETE
CLERK OF THE SUPREME COURT

By JANE GURULE
Deputy

APPENDIX D

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

Friday, August 17, 1979

NO. 12,613

ROBERT AMES and MARY
AMES, his wife,
Petitioners,

vs. Original Proceeding on Certiorari

W. DUANE McCARTY, M.D., LOVELACE
CLINIC and LOVELACE-BATAAN
MEDICAL CENTER,
Respondents.

This matter coming on for consideration by the Court upon Request for Reconsideration of Petition for writ of certiorari, and the Court having considered said request and being sufficiently advised in the premises;

NOW, THEREFORE, IT IS ORDERED that Request for Reconsideration of Petition for writ of certiorari be and the same is hereby denied.

ATTEST. A TRUE COPY

ROSE MARIE ALDERETE
Clerk of the Supreme Court
of the State of New Mexico

BATAAN MEMORIAL HOSPITAL

Albuquerque, New Mexico

REQUEST AND AUTHORIZATION FOR SURGERY, SPECIALIZED TREATMENT AND/OR PROCEDURE

Hospital Number 133796 Age 32
Name of Patient Mary Ames
Attending Doctor D. McCarty

Date of Signing ..... , 19.. Time .. A.M. P.M.

1. I request and authorize Dr. McCarty and his colleagues to provide the Patient Mary Ames (Name) using the facilities and personnel of the Hospital, the following procedure: (Must be Completed)
Culdotomy, Oophorectomy, Possible Vaginal Hysterectomy
(Nature of Treatment)

2. The nature and purpose of the above-named treatment or procedure, and the possibility of complications have been explained to me. No guarantee has been made as to the results that may be obtained.

3. If unforeseen conditions arise in the course of the procedure calling, in the doctor's judgment, for procedures in addition to or different from those now contemplated, I request and authorize the doctor to do whatever he deems necessary and advisable.

4. I request and authorize the administration and use of such anesthetics and the performance of such services involving pathology and radiology as the doctor and his colleagues may deem necessary and advisable, with the exception of: .....
("None" or a particular one.)

5. I understand those persons administering anesthesia or performing services involving pathology and radiology

and any special duty nurses employed by me, are not necessarily employees of the Hospital.

6. The Hospital may retain, preserve and use for scientific or teaching purposes, or dispose of, at its convenience and in accordance with the accustomed practice, any specimens, tissues, parts, or organs taken from the Patient's body during the Patient's hospitalization and/or as a result of any procedure performed upon the Patient.

I CERTIFY: This form has been explained to me; I have read the contents of this form or that the contents have been read to me; I understand its contents; the explanation of the contents was made, and all blanks or statements requiring insertion or completion were filled in, and the items not applicable were stricken before I signed.

Janet L. Monk, R.N. X Mary Ames
(Witness) (Patient)

.....
(Witness)

Patient cannot request or authorize because .....

.....
(Legally Responsible Representative)

.....
(Relationship to Patient)

.....
(Witness)

.....
(Witness)

431-1
AMES, MARY
133796 D. MCCARTY
F2-3-9-1940

AUTHORIZATION FOR OPERATION

APPENDIX F

GREAT SEAL OF THE STATE OF NEW MEXICO
STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

August 1, 1979

Chambers of
GERALD D. FOWLIE
District Judge
Division Five

P. O. Box 488
Albuquerque, New Mexico
87103

Mr. Eugene E. Klecan
Attorney at Law
Suite 1221, 505 Marquette, NW
Albuquerque, New Mexico 87102

Dear Mr. Klecan:

I find it increasingly difficult to be objective in matters in which you appear in person and will recuse myself in all such matters. This does not apply to other lawyers representing your firm.

I am filing the enclosed recusal in all cases assigned to your firm.

Sincerely,

Gerald D. Fowlie
GDF/lp

Enclosure (1)